
By: **Delegates Murray, Barkley, Benson, Bromwell, Bronrott, Burns, G. Clagett, Costa, Cryor, Donoghue, Dumais, Feldman, Goldwater, Harrison, Haynes, Heller, Hogan, Holmes, Kaiser, King, Lee, Madaleno, Mandel, McDonough, Montgomery, Nathan-Pulliam, Oaks, Patterson, Petzold, Ramirez, Rawlings, Ross, Simmons, Smigiel, Stern, Taylor, F. Turner, V. Turner, Vaughn, ~~and Weldon~~ Weldon, Hurson, Hammen, Boutin, Elliott, Hubbard, Morhaim, Pendergrass, Redmer, Rosenberg, and Rudolph**

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Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 12, 2003

CHAPTER _____

1 AN ACT concerning

2 **Nursing Homes - Third Party Liability Reviews and Audits**

3 FOR the purpose of ~~requiring the Health Care Quality Account to be funded by~~
4 ~~certain State general funds; requiring the Department of Health and Mental~~
5 ~~Hygiene to pay certain State general funds to the Comptroller; altering the~~
6 ~~purposes for which the Account may be used; requiring nursing homes that~~
7 ~~receive payment from the Medical Assistance program to provide certain~~
8 ~~financial information to the Department of Health and Mental Hygiene on a~~
9 ~~quarterly basis; requiring the Department to conduct third party liability~~
10 ~~reviews of certain financial information of nursing homes that receive payment~~
11 ~~from the Medical Assistance program; requiring authorizing the Department to~~
12 ~~conduct third party liability audits of a random sample of nursing homes that~~
13 ~~receive payment from the Medical Assistance Program; authorizing the~~
14 ~~Department to conduct third party liability audits of certain nursing homes~~
15 ~~under certain conditions; requiring that the audits be conducted at a certain~~
16 ~~frequency; authorizing the Department to contract with an entity to perform the~~
17 ~~audits; requiring the Department to use certain procurement procedures when~~
18 ~~making certain contracts; requiring audit contracts to include certain items;~~
19 ~~prohibiting audit contractors from being compensated in a certain manner;~~
20 ~~requiring audit contractors to complete certain reports on a certain frequency;~~
21 ~~requiring certain reports to include certain items; authorizing the Secretary to~~

1 establish certain appeals boards; designating the membership of the appeals
 2 boards; authorizing a nursing home to appeal the final report of a third party
 3 liability audit within a certain time period; requiring a certain individual within
 4 the Department to conduct a certain review of a certain appeal by a nursing
 5 home and issue a certain report; authorizing a nursing home to appeal the
 6 results of a certain report to the Nursing Home Appeal Board within a certain
 7 time period; requiring State general funds recovered through third party
 8 liability audits to be deposited into the Account; authorizing the Department to
 9 adopt regulations regarding third party liability reviews and audits; requiring
 10 the Department of Health and Mental Hygiene and the Department of Human
 11 Resources to conduct a study of the Medical Assistance Program eligibility
 12 process for nursing home residents; requiring the Department of Health and
 13 Mental Hygiene and the Department of Human Resources to submit a report to
 14 the Governor and certain committees of the General Assembly on or before a
 15 certain date; and generally relating to third party liability reviews and audits of
 16 nursing homes.

17 ~~BY repealing and reenacting, with amendments,~~
 18 ~~Article - Health - General~~
 19 ~~Section 19-1407(a) and (b)~~
 20 ~~Annotated Code of Maryland~~
 21 ~~(2000 Replacement Volume and 2002 Supplement)~~

22 BY adding to
 23 Article - Health - General
 24 Section 19-14A-01 through ~~19-14A-06~~ 19-14A-04, inclusive, to be under the
 25 new subtitle "Subtitle 14A. Third Party Liability Reviews and Audits of
 26 Nursing Homes"
 27 Annotated Code of Maryland
 28 (2000 Replacement Volume and 2002 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 30 MARYLAND, That the Laws of Maryland read as follows:

31 **Article - Health - General**

32 ~~19-1407.~~

33 (a) (1) ~~There is a Health Care Quality Account established in the~~
 34 ~~Department.~~

35 (2) ~~The Account shall be funded by:~~

36 (I) ~~civil money penalties paid by nursing homes [and];~~

37 (II) ~~other penalties that the Office of Health Care Quality may~~
 38 ~~assess; AND~~

1 ~~(III) STATE GENERAL FUNDS RECOVERED FROM A THIRD PARTY~~
 2 ~~LIABILITY AUDIT OF A NURSING HOME, AS AUTHORIZED UNDER SUBTITLE 14A OF~~
 3 ~~THIS ARTICLE.~~

4 (3) ~~The Department shall pay TO THE COMPTROLLER OF THE STATE:~~

5 ~~(I) all penalties collected under this title; AND~~

6 ~~(II) ALL STATE GENERAL FUNDS RECOVERED FROM A THIRD PARTY~~
 7 ~~LIABILITY AUDIT OF A NURSING HOME UNDER SUBTITLE 14A OF THIS ARTICLE [to~~
 8 ~~the Comptroller of the State].~~

9 (4) ~~The Comptroller shall distribute the funds collected under this title~~
 10 ~~to the Health Care Quality Account.~~

11 (5) ~~The Account is a continuing nonlapsing fund, not subject to § 7-302 of~~
 12 ~~the State Finance and Procurement Article.~~

13 (6) ~~Any unspent portions of the Account may not be transferred or~~
 14 ~~reverted to the General Fund of the State, but shall remain in the Account to be used~~
 15 ~~for the purposes specified in this section.~~

16 (b) ~~The Health Care Quality Account shall be used for:~~

17 ~~(1) training[.];~~

18 ~~(2) grant awards[.];~~

19 ~~(3) demonstration projects[.];~~

20 ~~(4) ENCOURAGEMENT OF INNOVATIVE PRACTICES;~~

21 ~~(5) LONG TERM CARE WORKFORCE DEVELOPMENT;~~

22 ~~(6) TESTING THE USE OF NEW TECHNOLOGIES;~~

23 ~~(7) IMPROVING THE SURVEY AND ENFORCEMENT PROCESS; or~~

24 ~~(8) other purposes designed to improve the quality of care.~~

25 SUBTITLE 14A. THIRD PARTY LIABILITY REVIEWS AND AUDITS OF NURSING HOMES.

26 19-14A-01.

27 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 28 INDICATED.

29 (B) ~~"BOARD" MEANS AN APPEAL BOARD ESTABLISHED BY THE SECRETARY~~
 30 ~~UNDER THIS SUBTITLE.~~

1 ~~(C)~~ "ERROR RATE" MEANS ONE LESS THE AMOUNT OF THE FINAL REPORTS
2 ~~DIVIDED BY THE AMOUNT OF THE INITIAL REPORTS IN THE CONTRACT PERIOD.~~

3 ~~(D)~~ (B) "FINAL REPORT" MEANS THE ~~CONTRACTOR~~ THIRD PARTY LIABILITY
4 AUDIT REPORT ISSUED TO THE DEPARTMENT AND A NURSING HOME STATING THE
5 TOTAL AMOUNT DUE TO THE DEPARTMENT AS A RESULT OF THE COMPLETED AUDIT.

6 ~~(E)~~ "INITIAL REPORT" MEANS THE ~~CONTRACTOR REPORT ISSUED TO THE~~
7 ~~PROVIDER STATING THE CONTRACTOR'S PROPOSED ADJUSTMENTS.~~

8 ~~(F)~~ (C) "NURSING HOME" HAS THE MEANING STATED IN § 19-1401(E) OF THIS
9 TITLE.

10 ~~(G)~~ (D) (1) "THIRD PARTY" MEANS ANY INDIVIDUAL, ENTITY, OR PROGRAM
11 THAT IS OR MAY BE LIABLE TO PAY ALL OR PART OF THE MEDICAL COST OF ANY
12 MEDICAL ASSISTANCE FURNISHED TO A RECIPIENT UNDER THE MEDICAL
13 ASSISTANCE PROGRAM.

14 (2) "THIRD PARTY" INCLUDES PRIVATE HEALTH INSURANCE,
15 EMPLOYMENT-RELATED HEALTH INSURANCE, MEDICAL SUPPORT FROM ABSENT
16 PARENTS, AUTOMOBILE INSURANCE, COURT JUDGMENTS OR SETTLEMENTS FROM A
17 LIABILITY INSURER, STATE WORKERS' COMPENSATION, FIRST PARTY
18 PROBATE-ESTATE RECOVERIES, OR ANY FEDERAL PROGRAMS.

19 ~~(H)~~ (E) "THIRD PARTY LIABILITY AUDIT" MEANS A FINANCIAL REVIEW OF
20 MEDICAL ASSISTANCE PAYMENTS TO A PROVIDER TO ASCERTAIN THE LEGAL
21 LIABILITY OF THIRD PARTIES TO PAY FOR CARE AND SERVICES AVAILABLE UNDER
22 THE MEDICAL ASSISTANCE PROGRAM.

23 (F) "THIRD PARTY LIABILITY REVIEW" MEANS A FINANCIAL REVIEW OF THE
24 CREDIT BALANCES OF A NURSING HOME TO ASCERTAIN THE LEGAL LIABILITY OF
25 THIRD PARTIES TO PAY FOR CARE AND SERVICES AVAILABLE UNDER THE MEDICAL
26 ASSISTANCE PROGRAM.

27 19-14A-02.

28 (A) A NURSING HOME THAT RECEIVES PAYMENT FROM THE MEDICAL
29 ASSISTANCE PROGRAM SHALL PROVIDE A REPORT OF THE CREDIT BALANCES OF THE
30 NURSING HOME TO THE DEPARTMENT ON A QUARTERLY BASIS.

31 ~~(A)~~ (B) THE DEPARTMENT SHALL CONDUCT A THIRD PARTY LIABILITY
32 AUDIT REVIEW OF THE REPORT OF THE CREDIT BALANCES PROVIDED UNDER
33 SUBSECTION (A) OF THIS SECTION. EACH NURSING HOME THAT RECEIVES PAYMENT
34 FROM THE MEDICAL ASSISTANCE PROGRAM.

35 (C) THE DEPARTMENT MAY CONDUCT A THIRD PARTY LIABILITY AUDIT OF A
36 RANDOM SAMPLE OF THE REPORTS OF CREDIT BALANCES REVIEWED UNDER
37 SUBSECTION (B) OF THIS SECTION.

1 (D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
2 DEPARTMENT MAY CONDUCT A THIRD PARTY LIABILITY AUDIT OF A NURSING HOME
3 THAT IS FOUND TO BE NONCOMPLIANT AS A RESULT OF THE AUDIT CONDUCTED
4 UNDER SUBSECTION (C) OF THIS SECTION.

5 (2) IN CONDUCTING THE THIRD PARTY LIABILITY AUDIT AUTHORIZED
6 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT MAY ONLY REVIEW
7 THE FINANCIAL INFORMATION OF THE NURSING HOME FOR THE 2-YEAR PERIOD
8 IMMEDIATELY PRIOR TO THE DATE OF THE AUDIT PERIOD IN WHICH THE NURSING
9 HOME WAS FOUND TO BE NONCOMPLIANT.

10 ~~(B) A THIRD PARTY LIABILITY AUDIT SHALL BE CONDUCTED AT LEAST ONCE~~
11 ~~EVERY 2 YEARS.~~

12 ~~(C) THE DEPARTMENT MAY CONTRACT WITH AN ENTITY TO PERFORM THIRD~~
13 ~~PARTY LIABILITY AUDITS.~~

14 ~~(D) IN CONTRACTING WITH AN ENTITY TO PERFORM THIRD PARTY LIABILITY~~
15 ~~AUDITS, THE DEPARTMENT SHALL USE STANDARD PROCUREMENT PROCEDURES.~~

16 ~~19-14A-03.~~

17 ~~(A) A CONTRACT FOR THE PERFORMANCE OF A THIRD PARTY LIABILITY AUDIT~~
18 ~~SHALL INCLUDE:~~

19 ~~(1) A BUDGET TO COVER THE ADMINISTRATIVE EXPENSES OF THE~~
20 ~~CONTRACTOR;~~

21 ~~(2) AN ESTIMATE OF THE AMOUNT OF GENERAL FUNDS THE~~
22 ~~DEPARTMENT ANTICIPATES WILL BE RECOVERED THROUGH THE AUDIT; AND~~

23 ~~(3) A PENALTY TO THE VENDOR IF THE ERROR RATE EXCEEDS 20% AT~~
24 ~~THE CONCLUSION OF THE CONTRACT PERIOD.~~

25 ~~(B) A THIRD PARTY LIABILITY CONTRACTOR MAY NOT BE COMPENSATED~~
26 ~~SOLELY:~~

27 ~~(1) ON A CONTINGENCY BASIS; OR~~

28 ~~(2) BY A PERCENTAGE OF THE FUNDS RECOVERED THROUGH THE~~
29 ~~AUDIT.~~

30 ~~(C) EACH CONTRACTOR SHALL COMPLETE AUDIT STATUS REPORTS FOR EACH~~
31 ~~AUDIT UNDERTAKEN BY THE CONTRACTOR.~~

32 ~~(D) EACH AUDIT STATUS REPORT SHALL:~~

33 ~~(1) BE SUBMITTED TO THE DEPARTMENT ON A QUARTERLY BASIS; AND~~

34 ~~(2) AT A MINIMUM INCLUDE:~~

- 1 ~~(I)~~ THE NUMBERS OF REPORTS ISSUED; AND
- 2 ~~(II)~~ THE DOLLAR AMOUNTS OF BOTH INITIAL AND FINAL REPORTS.
- 3 ~~19-14A-04; 19-14A-03.~~
- 4 (A) THE SECRETARY MAY:
- 5 ~~(1)~~ ESTABLISH ONE OR MORE APPEAL BOARDS FOR THE PURPOSES OF
- 6 THIS SECTION; AND
- 7 ~~(2)~~ DESIGNATE THE JURISDICTION OF A BOARD.
- 8 (B) A BOARD SHALL CONSIST OF THREE MEMBERS:
- 9 ~~(1)~~ TWO OF WHOM SHALL BE APPOINTED BY THE SECRETARY; AND
- 10 ~~(2)~~ ONE OF WHOM SHALL BE CHOSEN BY THE APPOINTED MEMBERS.
- 11 (C) OF THE TWO APPOINTED MEMBERS:
- 12 ~~(1)~~ ONE SHALL BE A REPRESENTATIVE OF THE NURSING HOME
- 13 INDUSTRY WHO IS KNOWLEDGEABLE IN MEDICARE AND MEDICAL ASSISTANCE
- 14 BILLING PROCEDURES; AND
- 15 ~~(2)~~ ONE SHALL BE AN INDIVIDUAL WHO IS EMPLOYED BY THIS STATE
- 16 AND KNOWLEDGEABLE IN MEDICARE AND MEDICAL ASSISTANCE BILLING
- 17 PROCEDURES AND WHO DOES NOT DIRECTLY PARTICIPATE IN THE THIRD PARTY
- 18 LIABILITY AUDITS.
- 19 ~~(D)~~ (A) A NURSING HOME MAY APPEAL THE RESULTS OF A FINAL REPORT OF
- 20 A THIRD PARTY LIABILITY AUDIT BY FILING WRITTEN NOTICE WITH THE
- 21 DEPARTMENT APPROPRIATE APPEAL BOARD WITHIN 30 DAYS AFTER THE NURSING
- 22 HOME RECEIVES THE FINAL REPORT FROM THE DEPARTMENT ~~OR ITS AGENT.~~
- 23 (B) AN INDIVIDUAL AT THE DEPARTMENT WHO DID NOT PARTICIPATE IN THE
- 24 FINAL REPORT SHALL:
- 25 (1) REVIEW THE APPEAL AUTHORIZED UNDER SUBSECTION (A) OF THIS
- 26 SECTION; AND
- 27 (2) ISSUE A REPORT THAT EITHER REVISES OR CONCURS WITH THE
- 28 FINAL REPORT OF THE THIRD PARTY LIABILITY AUDIT.
- 29 (C) A NURSING HOME MAY APPEAL THE RESULTS OF THE REPORT ISSUED BY
- 30 THE DEPARTMENT UNDER SUBSECTION (B) OF THIS SECTION BY FILING WRITTEN
- 31 NOTICE WITH THE NURSING HOME APPEAL BOARD WITHIN 30 DAYS OF RECEIPT OF
- 32 THE REPORT.

1 ~~19-14A-05.~~

2 ~~ANY GENERAL FUNDS RECOVERED THROUGH A THIRD PARTY LIABILITY AUDIT~~
 3 ~~OF A NURSING HOME THAT ARE IN EXCESS OF THE CONTRACT AMOUNT SHALL BE~~
 4 ~~DEPOSITED INTO THE HEALTH CARE QUALITY ACCOUNT ESTABLISHED UNDER §~~
 5 ~~19-1407 OF THIS TITLE.~~

6 ~~19-14A-06. 19-14A-04.~~

7 THE DEPARTMENT MAY ADOPT RULES AND REGULATIONS TO CARRY OUT THE
 8 PROVISIONS OF THIS SUBTITLE.

9 SECTION 2. AND BE IT FURTHER ENACTED, That:

10 ~~(a)~~ on or before December 1, 2003, the Department of Health and Mental
 11 Hygiene and the Department of Human Resources shall conduct a study of the
 12 Medical Assistance Program eligibility determination process submit a report to the
 13 Governor and, in accordance with § 2-1246 of the State Government Article, to the
 14 Senate Finance Committee and the House Health and Government Operations
 15 Committee on the status of measures implemented and considered by the
 16 Department of Health and Mental Hygiene and the Department of Human Resources
 17 to address and resolve issues relating to delays in the Medicaid eligibility process for
 18 nursing home residents.

19 (b) The study shall:

20 (1) describe the Medical Assistance Program eligibility determination
 21 process and subsequent changes in Medical Assistance Program enrollee status for
 22 nursing home residents;

23 (2) calculate the average time period for determining changes in the
 24 financial and eligibility status of nursing home residents; and

25 (3) identify any barriers or delays in:

26 (i) the processing of Medical Assistance Program eligibility
 27 determination; and

28 (ii) the communication of subsequent changes in Medical
 29 Assistance Program enrollee status to a nursing home.

30 ~~(c)~~ On or before October 1, 2003, the Department of Health and Mental
 31 Hygiene and the Department of Human Resources shall submit a report to the
 32 Governor and, in accordance with § 2-1246 of the State Government Article, to the
 33 Senate Finance Committee and the House Health and Government Operations
 34 Committee on the results of the study.

35 (d) The report shall include recommendations for:

36 (1) addressing any identified barriers or delays;

1 (2) streamlining the eligibility determination process for nursing home
2 residents; and

3 (3) improving communication between the Department of Health and
4 Mental Hygiene, the Department of Human Resources, and nursing homes regarding
5 the eligibility of nursing home residents under the Medical Assistance Program and
6 any changes in eligibility status.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2003.